

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF FLORIDA

FT. MYERS DIVISION

CLERK, U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FT. MYERS, FLORIDA

DEC 22 AM 11:45

UNITED STATES OF AMERICA,)

Plaintiff,)

v.)

No.)

2: 06-cv-679-FTM-29 SPC

MAX A. HOLCHER)

individually and doing business as,)

HOLCHER & COMPANY, P.A., Certified)

Public Accountants, and HOLCHER CPA)

Group, P.A.,)

Defendant.)

COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF

Plaintiff United States of America alleges against the defendant, Max A. Holcher, individually and doing business as Holcher & Company, PA. and Holcher CPA Group, P.A., as follows:

1. This action has been requested by the Chief Counsel of the Internal Revenue Service, a delegate of the Secretary of the Treasury, and commenced at the direction of a delegate of the Attorney General, pursuant to the provisions of IRC §§ 7402, 7407, and 7408.

Jurisdiction and Venue

2. Jurisdiction is conferred on this Court by Sections 1340 and 1345 of Title 28, United States Code, and IRC §§ 7402(a), 7407, and 7408.

3. Venue is proper in this Court under 28 U.S.C. § 1391(b)(1) because Holcher resides within this judicial district.

Defendant and Basic Facts

4. Max A. Holcher is a certified public accountant with an active Florida Certified Public Accountant license and has prepared federal income tax returns for customers since 1969.

5. Holcher resides in Naples, Collier County, Florida, within this Court's jurisdiction. Holcher is a Certified Public Accountant (CPA) and income tax return preparer engaged in the unlawful promotion of a tax scheme in connection with which he gives customers false and fraudulent tax advice regarding the allowability of deductions, the excludability of income, and the securing of other purported tax benefits.

6. Holcher prepares customers' federal income tax returns consistent with his scheme to help customers evade federal taxes by: failing to report customers' Social Security tax liability; mischaracterizing salaries as rental or royalty income; falsely claiming business deductions for personal non-deductible expenses; claiming bogus cost-of-goods deductions for service corporations; and otherwise understating customers' actual income by deducting sham management fees.

7. Holcher has prepared at least 169 federal tax returns for customers since 1999.

8. Holcher conducts business as a certified public accountant through Holcher & Company, P.A., Certified Public Accountants, a registered Florida corporation with its principal place of business at 1000 9th Street, North, Naples, Florida 34102, within this district.

9. Holcher also conducts business as a certified public accountant through Holcher CPA Group, P.A., a registered Florida corporation with its principal place of business at 1000 9th Street, North, Naples, Florida 34102, within this district.

10. Holcher directs other employees in his firm, and reviews and signs all tax returns prepared by Holcher & Company, P.A., Certified Public Accountants.

11. This is a civil action brought by the United States pursuant to sections 7402(a), 7407, and 7408 of the Internal Revenue Code (26 U.S.C.) ("IRC") to enjoin Holcher and all those in active concert or participation with him from:

- A. organizing or selling plans or arrangements that advise or assist customers to attempt to evade the assessment or collection of federal tax, including the Tax Engineering tax-fraud scheme described below;
- B. preparing or filing (or helping to prepare or file) federal income tax returns, amended returns, or other related documents and forms for others;
- C. Engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
- D. engaging in other conduct that interferes with the administration and enforcement of the internal revenue laws.

Overview of Fraudulent "Tax Engineering" Schemes

12. Holcher promotes a tax-fraud scheme he refers to as "Tax Engineering."

13. At a January 27, 2005 meeting with IRS agents who were investigating his promotion, Holcher stated that "Tax Engineering" is a phrase he uses to describe an "extremely complex" tax system that helps customers "meet their personal and business needs."

14. In reality, Holcher's Tax Engineering is a series of fraudulent transactions that Holcher helps his customers engage in to take advantage of Holcher's misapplication of several Internal Revenue Code provisions. This results in Holcher under-reporting his customers' income and overstating his customers' expenses on the federal income tax returns that Holcher prepares for them.

15. In connection with promoting his Tax Engineering scheme, Holcher makes false statements to customers about the tax benefits they will obtain by participating in the scheme.

16. Holcher charges his clients \$5,000 to \$20,000 in fees per year for his Tax Engineering scheme.

Bogus Transactions Involving Corporations

17. Holcher prepares federal income tax returns that use bogus transactions involving corporations. The scheme uses fabricated deductions to reduce his customers' reported income on their federal income tax returns to nominal amounts.

18. Holcher helps customers establish corporations with each company distributing income to another company. Funds flow from one company to another company by way of bogus rental agreements, bogus fees for services, and distributions.

19. Initially Holcher creates a new corporation for a customer who already owns a business and lists himself as the tax officer of the new corporation.

20. After Holcher helps his customer create the corporation, the corporation enters a purported business-consultation agreement with the customer's existing business.

21. The business-consultation agreement provides that the new corporation will supply business-management and consultation services to the customer's existing business, in return for a monthly payment.

22. In fact the new corporation does not provide any such services or otherwise earn the fee that the customer's business pays it.

23. The customer's business claims deductions on its federal income tax return for the payments it makes to the new corporation for purported services, and thereby improperly reduces its reported taxable income.

24. Then the new corporation reduces its reported taxable income by improperly deducting Holcher's customers' personal, non-deductible expenses.

25. For example, the IRS determined that Holcher prepared a return for a customer's business, which improperly claimed, among other items, business expenses for: 1) the customer's personal travel expenses; 2) the customer's personal home-maintenance expenses; 3) the customer's personal monthly swimming-pool service; and 4) the customer's personal auto expenses.

Fraudulent Use of Cost of Goods Sold Deductions for Service Corporations

26. Holcher improperly uses costs-of-goods-sold deductions for service companies, such as dentists.

27. The costs-of-goods-sold deduction is for companies that make and sell goods. It permits the company to deduct the cost of goods sold from its gross receipts.

28. Holcher, however, improperly reduces companies' gross receipts by claiming bogus Cost of Goods Sold for companies that do not sell or produce products.

29. Rather, he claims this deduction for royalties paid by the company.

30. For example, on October 12, 2004, Holcher prepared an 1120s information return for a dental business showing gross receipts of \$1,561,767.00 and costs of goods sold of

\$1,052,421.00. Schedule A, Line 5 indicates that the \$644,294.00 is for royalties and \$335,410.00 is for a correction and adjustment.

31. Holcher lowered this company's reported income by nearly a million dollars by claiming bogus costs-of-goods-sold deductions. Therefore, this dramatically understated this customer's reported income.

32. Enclosed is a chart highlighting Holcher's misuse of the costs-of-goods-sold deduction:

| Date Prepared | Business | Total Receipts | Cost of Goods Sold Deduction | Explanation for Cost of Goods Sold Deduction |
|----------------------|---------------------------|-----------------------|-------------------------------------|---|
| February 2, 2005 | Management sales services | \$158,493.00 | \$45,246.00 | Royalties |
| May 4, 2004 | Advertising and marketing | \$457,208.00 | \$258,600.00 | Royalties |
| February 16, 2004 | Management sales services | \$85,824.00 | \$21,166.00 | Royalties |
| December 15, 2003 | Home improvement services | \$43,099.00 | \$22,386.00 | Royalties |
| September 12, 2003 | Dental Services | \$1,385,719.00 | \$896,163.00 | Royalties and Incentive Fees |
| September 13, 2002 | Dental services | \$1,353,753.00 | \$938,601.00 | Royalty payments and Incentive Fees |
| August 5, 2001 | Dental services | \$1,323,793.00 | \$833,670.00 | Royalties and Incentive Fees |

33. Holcher improperly claimed a costs-of-goods-sold deduction for each of these service corporations.

34. In addition, by reporting officer compensation as royalties Holcher helps customers evade Social Security taxes.

35. In a meeting with IRS agents on January 27, 2005, Holcher informed the IRS that business owners use their intellect to make money and should be compensated by royalty payments instead of salary.

36. However, royalty payments are not taxed for purposes of Social Security taxes, therefore, compensating officers with royalty payments instead of salary causes his customers to underpay their Social Security taxes.

Holcher's Customers who had Amended Returns Prepared by Separate Accountants

37. A bank denied one of Holcher's customer's application for a mortgage because the bank found problems with the Holcher-prepared tax returns he provided to the bank.

38. The customer then had a different certified public accountant review his tax returns.

39. The new certified public accountant prepared amended returns for 2000 and the customer's tax liability increased by \$90,322 in 2000.

40. According to the customer, he paid lower taxes because Holcher set up different corporations and each corporation purportedly paid management fees to lower his reportable income.

41. In addition, the customer had a separate business location, but Holcher had his company improperly pay his home rent although he did not work at home.

42. Another one of Holcher's former customers, who suspected that Holcher had improperly prepared his federal income tax returns, had his 2000 federal income tax returns reviewed and then amended by a different certified public accountant. This former customer's tax liability increased on his 2000 returns by \$60,245.

43. Holcher falsely under-reported this customer's adjusted gross income on his 2000 return by \$173,629. This occurred because Holcher improperly failed to report income from the customer's S corporation of \$173,629.00. The amended tax return included \$187,686 as income from the customer's S corporation, while Holcher only included \$5,700 as income from the S Corporation.

Prior Sanctions Against Holcher and Present IRS Investigation

44. The IRS has assessed penalties against Holcher under IRC § 6694(a) for the same conduct at issue in this litigation.

45. The below chart highlights the IRS penalties assessed against Holcher:

| Date | Amount | Reason for penalty |
|-------------------|---------------|---|
| March 10, 1993 | \$250.00 | Penalty under IRC § 6694(a) for understatement of taxpayer's liability due to unrealistic position. |
| February 22, 1993 | \$250.00 | Penalty under IRC § 6694(a) for understatement of taxpayer's liability due to unrealistic position. |

| | | |
|-----------------|------------|--|
| August 2, 1993 | \$250.00 | Penalty under IRC § 6694(a) for understatement of taxpayer's liability due to unrealistic position. |
| January 1, 1996 | \$7,889.00 | Trust Fund Recovery Penalty under IRC § 6672. |
| June 29, 1998 | \$750.00 | Penalty under IRC § 6694(a) for understatement of taxpayer's liability due to intentional disregard for rules and regulations. |
| April 9, 2001 | \$250.00 | Penalty under IRC § 6694(a) for understatement of taxpayer's liability due to unrealistic position. |

46. The IRS assessed a penalty against Holcher on April 9, 2001 for understating his customer's liability by having his customer's business improperly pay personal expenses and for using bogus management fees to reduce his customer's business income.

47. Despite the penalties against Holcher he continues to prepare fraudulent returns.

48. As part of their investigation of Holcher's improper activities, IRS agents met with Holcher on November 9, 2005, and advised him that the IRS was investigating him for a possible injunction and penalties for his promotion of the Tax Engineering scheme and his return preparation business.

49. The IRS specifically informed Holcher that the IRS was concerned with him: 1) using royalty agreements for officer compensation; 2) using management fees as part of sham corporate transactions; 3) claiming bogus cost of goods sold deductions for service corporations; and 4) claiming his customers' personal expenses as business expenses.

50. At his meeting with IRS agents on November 9, 2005, Holcher indicated his refusal to abandon his improper practice, because he maintained that law supports his positions. He

indicated that he would only stop using royalty agreements instead of officer compensation, if the IRS stopped investigating him.

51. He advised the agents that he would continue to prepare tax returns notwithstanding the IRS investigation.

52. Holcher continues to use his Tax Engineering scheme with new customers and to service his existing customers.

53. Despite repeated IRS sanctions and notification of the IRS investigation, Holcher continues to prepare fraudulent federal income tax returns and will continue to prepare fraudulent tax returns if he is not enjoined.

Harm to the public

54. Holcher's preparation of false and fraudulent tax returns, to the extent that the Internal Revenue Service has not detected them, has resulted in customers receiving substantial federal income tax refunds to which they are not legally entitled and in not reporting and paying taxes that they owe.

55. Holcher harms the United States because his customers are not reporting and paying their correct tax liabilities. Four of Holcher's former customers went to different CPAs and had their 2000 tax returns amended to correct Holcher's errors. The four amended returns resulted in an increase in taxes of \$181,396 for an average of \$45,484 per customer.

56. Holcher has prepared 169 federal income tax returns since 1999. Assuming an average harm per customer of \$45,484 Holcher's scheme may have cost the Treasury \$7.6 million or more.

57. In addition to the harm caused by their preparation of tax returns that understate his customers' tax liabilities, Holcher's activities undermine public confidence in the administration of the federal tax system and encourage noncompliance with the internal revenue laws.

58. Holcher further harms the United States because the Internal Revenue Service must devote its limited resources to identifying Holcher's customers, ascertaining their correct tax liability, recovering any refunds erroneously issued, and collecting any additional taxes and penalties. Given the IRS's limited resources, identifying and recovering all revenues lost from Holcher's preparation of false and fraudulent returns may be impossible.

Count I

Injunction under I.R.C. § 7407

59. The United States incorporates by reference the allegations in paragraphs 1 through 58.

60. IRC § 7407 authorizes a district court to enjoin an income tax preparer from:

- A. engaging in conduct subject to penalty under I.R.C. § 6694 (which penalizes a tax return preparer who prepares or submits a return that contains an unrealistic position that is not adequately disclosed or that is frivolous);
- B. misrepresenting his experience or education as a tax return preparer; or
- C. engaging in any other fraudulent or deceptive conduct that substantially interferes with the proper administration of the internal revenue laws,

if the court finds that injunctive relief is appropriate to prevent the recurrence of such conduct.

Additionally, if the court finds that a preparer has continually or repeatedly engaged in such conduct, and the court finds that a narrower injunction (*i.e.*, prohibiting only that specific enumerated conduct) would not be sufficient to prevent that person's interference with the proper

administration of the internal revenue laws, the court may enjoin the person from further acting as a federal income tax return preparer.

61. Holcher has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 by preparing federal tax returns that understate his customers' liabilities based on unrealistic and frivolous positions.

62. Holcher's continual and repeated violations of I.R.C. § 6694 fall within I.R.C. § 7407(b)(1)(A) and (D), and thus are subject to an injunction under I.R.C. § 7407.

63. If he is not enjoined, Holcher is likely to continue to file false and fraudulent tax returns.

64. Holcher's repeated and varied conduct subject to an injunction under I.R.C. § 7407 demonstrates that a narrow injunction prohibiting only specific conduct would be insufficient to prevent Holcher's interference with the proper administration of the internal revenue laws. Thus, he should be permanently barred from acting as a return preparer.

Count II

Injunction under I.R.C. § 7408

65. The United States incorporates by reference the allegations in paragraphs 1 through 64.

66. I.R.C. § 7408 authorizes a district court to enjoin any person from engaging in conduct subject to penalty under either I.R.C. §§ 6700 or 6701 if injunctive relief is appropriate to prevent recurrence of such conduct.

67. I.R.C. § 6700 penalizes any person who organizes, promotes or sells a plan or arrangement and makes, in connection with organizing or selling the plan or arrangement, a statement regarding the excludibility of income or securing of any other tax benefit that the person knows or has reason to know is false or fraudulent as to any material matter.

68. I.R.C. § 6701 penalizes any person who aids or assists in, procures, or advises with respect to the preparation or presentation of a federal tax return, refund claim, or other document knowing (or having a reason to believe) that it will be used in connection with any material matter arising under the internal revenue laws and knowing that if it is so used it will result in an understatement of another person's tax liability.

69. Holcher knows or has reason to know that he made false or fraudulent statements within the meaning of I.R.C. § 6700 to customers in connection with selling his "Tax Engineering" scheme. Holcher helps his customers set up sham transactions and falsely advises his customers that they can receive tax benefits from these sham transactions.

70. Holcher prepares federal tax returns for customers that he knows will understate their correct tax liabilities. Holcher's conduct is thus subject to a penalty under I.R.C. § 6701.

71. If the Court does not enjoin Holcher, he is likely to continue to engage in conduct subject to penalty under I.R.C. §§ 6700 and 6701. Injunctive relief is therefore appropriate under I.R.C. § 7408.

Count III

**Injunction under I.R.C. § 7402(a) for unlawful
interference with the enforcement of the internal revenue laws**

72. The United States incorporates by reference the allegations of paragraphs 1 through 71.

73. I.R.C. § 7402 authorizes a district court to issue orders of injunction as may be necessary or appropriate for the enforcement of the internal revenue laws.

74. Holcher, through the actions described above, has engaged in conduct that substantially interferes with the enforcement of the internal revenue laws.

75. Unless enjoined, Holcher is likely to continue to engage in such improper conduct. If the Court does not enjoin Holcher from engaging in fraudulent and deceptive conduct the United States will suffer irreparable injury.

76. Enjoining Holcher is in the public interest because an injunction, backed by the Court's contempt powers if needed, will stop his illegal conduct and the harm it causes the United States Treasury.

77. The United States is entitled to injunctive relief under 26 U.S.C. § 7402(a).

WHEREFORE, the plaintiff United States of America prays for the following:

A. That the Court find that Max A. Holcher, individually and doing business as Holcher & Company, PA., Certified Public Accountants and Holcher CPA Group, P.A., has continually and repeatedly engaged in conduct subject to penalty under I.R.C. § 6694 and has continually and repeatedly engaged in other fraudulent or deceptive conduct that substantially interferes with the

administration of the tax laws, and that a narrower injunction prohibiting only this specific misconduct would be insufficient;

B. That the Court find that Max A. Holcher, individually and doing business as Holcher & Company, PA., Certified Public Accountants and Holcher CPA Group, P.A., has engaged in conduct subject to a penalty under I.R.C. § 6701, and that injunctive relief under I.R.C. § 7408 is appropriate to prevent a recurrence of that conduct;

C. That the Court find that Max A. Holcher, individually and doing business as Holcher & Company, PA., Certified Public Accountants and Holcher CPA Group, P.A., has engaged in conduct that interferes with the enforcement of the internal revenue laws, and that injunctive relief is appropriate to prevent the recurrence of that conduct pursuant to the Court's inherent equity powers and I.R.C. § 7402(a);

D. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter a permanent injunction prohibiting Max A. Holcher, individually and doing business as Holcher & Company, PA., Certified Public Accountants and Holcher CPA Group, P.A., and all those in active concert or participation with him from:

1. organizing or selling plans or arrangements that advise or assist customers to attempt to evade the assessment or collection of federal tax, including the Tax Engineering tax-fraud scheme described above;
2. preparing or filing (or helping to prepare or file) federal tax returns, amended returns, or other related documents and forms for others;
3. Engaging in any other activity subject to penalty under IRC §§ 6694, 6700, 6701, or any other penalty provision of the IRC; and
4. engaging in other conduct that interferes with the administration and enforcement of the internal revenue laws.

E. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Max A. Holcher within fifteen days to contact by United States Mail and, if an e-mail address is known, by e-mail, all persons for whom he prepared a federal tax return to inform them of the Court's findings concerning the falsity of Holcher's prior representations and enclose a copy of the permanent injunction against him;

F. That the Court, pursuant to I.R.C. §§ 7402(a), 7407, and 7408, enter an injunction requiring Max A. Holcher to produce to counsel for the United States within fifteen days a list that identifies by name, social security number, address, e-mail address, and telephone number and tax period(s) all persons for whom he prepared federal tax returns or claims for a refund since January 1, 1999;

G. That the Court retain jurisdiction over Max A. Holcher, individually and doing business as Holcher & Company, P.A., Certified Public Accountants and Holcher CPA Group, P.A., and over this action to enforce any permanent injunction entered against Holcher;

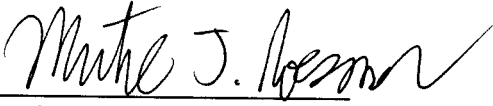
H. That the United States be entitled to conduct discovery to monitor Holcher's compliance with the terms of any permanent injunction entered against him; and

I. That this Court grant the United States such other and further relief, including costs, as is just and equitable.

DATED: December 20, 2006

Respectfully submitted,

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